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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/814,572	03/22/2001	Romulus Kimbro Brazzell	OP/4-31363A	4539

1095 7590 01/11/2006

NOVARTIS  
CORPORATE INTELLECTUAL PROPERTY  
ONE HEALTH PLAZA 104/3  
EAST HANOVER, NJ 07936-1080

EXAMINER
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STIGELL, THEODORE J

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/814,572

Applicant(s)

BRAZZELL, ROMULUS KIMBRO

Examiner

Theodore J. Stigell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 6, 16-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-15, 20-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Response to Amendment***

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, 7-8, 13-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Miller et al. (US 2002/0040015 A1). Miller et al. disclose a method of treating unwanted ocular neovascularization in a subject suffering from choroidal neovascularization, the method comprising administering an effective amount of an anti-angiogenic agent to the subject, wherein the anti-angiogenic agent is selected from the group consisting of antagonists of vascular endothelial growth factor or inhibitors of protein kinases, administering an effective amount of photosensitive agent to the subject, and irradiating the unwanted neovasculature with light having a wavelength absorbable by the photosensitive agent. The agents can be administered to the patient simultaneously or one after the other. It is conceivable that multiple administrations of the anti-angiogenic agent can be delivered to make sure that enough dosage has been delivered to the diseased area to be effective.

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Claims 1 and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by Margaroon et al. (6,117,862). Margaroon discloses a method of treating unwanted ocular neovascularization in a subject suffering from choroidal neovascularization, the method comprising administering an effective amount of an anti-angiogenic agent to the subject, wherein the anti-angiogenic agent is selected from the group consisting of antagonists of vascular endothelial growth factor (genistein), administering an effective amount of photosensitive agent to the subject, and irradiating the unwanted neovasculature with light having a wavelength absorbable by the photosensitive agent.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 9-10 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al. (US 2002/0040015 A1) or Margaroon et al. (6,117,862) in

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view of Brazzell et al. (6,214,819). Miller et al. and Margaron et al. disclose all of the limitations as recited in claim 7, but fail to teach the use of N-benzoyl-staurospaurine, octreotide, or CGP 79787 as an anti-angiogenic agent. Brazzell et al ('819) disclose wherein the anti-angiogenic agent is N-benzoyl-staurospaurine. It would have been obvious to one with ordinary skill in the art to use the teachings of Brazzell et al to modify the inventions of Miller et al. or Margaron et al. wherein the anti-angiogenic agent is selected from the group consisting of N-benzoyl-staurospaurine since this is notoriously well known in the art as an effective anti-angiogenic agent. The Applicant has not disclosed in the instant application that octreotide or CGP 79787 would work any better than N-benzoyl-staurospaurine. Therefore, the use of octreotide and CGP 79787 as an anti-angiogenic agent is considered a matter of design choice that does not patentably distinguish the instant claims from the combined references.

Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al. (US 2002/0040015 A1) or Margaron et al. (6,117,862) in view of Richter et al (5,770,619). Miller et al. and Margaron et al. disclose all of the claimed limitations except wherein the photosensitive agent is selected from the group consisting of porphyrin and a purpurin, and a benzoporphyrin derivative monacid ring A. Richter et al discloses wherein the photosensitive agent is selected from the group consisting of porphyrin and a purpurin, and a benzoporphyrin derivative monacid ring A. It would have been obvious to one with ordinary skill in the art to use the teachings of Richter et al to modify the invention of Miller et al. and Margaron et al. wherein the photosensitive agent is selected from the group consisting of porphyrin and a purpurin,

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and a benzoporphyrin derivative monacid ring A since these are notoriously well known in the art as effective photosensitive agents.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theodore J. Stigell whose telephone number is 571-272-8759. The examiner can normally be reached on M-F 8:30-5:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Theodore J. Stigell

  
NICHOLAS D. MCGHEE  
SUPERVISORY PATENT EXAMINER  
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